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**DIGEST OF OTHER RECENT VIRGINIA DECISIONS.**

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**Supreme Court of Appeals.**

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

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NORFOLK & W. RY. CO. *v.* HAYDEN et al.

June 14, 1917.

[93 S. E. 77.]

**1. Limitation of Actions (§ 55 (7)\*)—Accrual of Cause of Action—Flooding of Land.**—A landowner's cause of action for injury arising from the flooding of his lands by reason of a permanent dam arose at the time of the first commencement of the injury following the original erection of the dam, and the right of action for such injury past, present, and future was barred by the statute of limitations after the expiration of five years thereafter, unless there is something to take the case out of the operation of such statute.

[Ed. Note.—For other cases, see Limitation of Actions, Cent. Dig. § 305.\* 9 Va.-W. Va. Enc. Dig. 393.]

**2. Waters and Water Courses (§ 167 (1)\*)—Construction of Dam—Forfeiture of Right—Retroactive Application of Statute.**—Milling Act (Code 1887, § 1356 [Code 1904, p. 758]), providing that, if a mill be at any time rendered unfit for use, and the rebuilding or repair thereof shall not within two years from the time of such unfitness be commenced, the title to the land so circumstanced shall revert to the former owner, his heirs or assigns, and the leave so granted shall then be in force no longer, is not retroactive.

[Ed. Note.—For other cases, see Waters and Water Courses, Cent. Dig. §§ 192, 194-199, 201, 202.\* 9 Va.-W. Va. Enc. Dig. 800, et seq.]

**3. Waters and Water Courses (§ 167 (1)\*)—Dams—Milling Act.**—In an action to enjoin the maintenance of a dam which overflows plaintiff's land if the dam was built under the Milling Acts, the question whether the forfeiture provisions of such acts are applicable must be decided by reference to the Milling Act in force when the dam was built.

[Ed. Note.—For other cases, see Waters and Water Courses, Cent. Dig. §§ 192, 194-199, 201, 202.\* 9 Va.-W. Va. Enc. Dig. 800, et seq.]

**4. Limitation of Actions (§ 55 (7)\*)—Dams—Injunction—Milling Act.**—Where Milling Act of February, 1745 (5 Hen. St. 360), in force when a dam was built, contained no forfeiture penalty, there

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

is nothing to take plaintiff's action for injuries caused by flooding out of the operation of the statute of limitations.

[Ed. Note.—For other cases, see Limitation of Actions, Cent. Dig. § 305.\* 9 Va.-W. Va. Enc. Dig. 412.]

**5. Limitation of Actions (§ 55 (7)\*)—Injunction—Milling Act.—**

Where the predecessors in title of the owner of a dam constructed under the Milling Acts owned the land on both sides of the stream on which the dam was built, a forfeiture provision of the Milling Acts of October, 1785 (12 Hen. St. 187) and September 2, 1811, providing for the forfeiture of one acre of land condemned for the abutment of one end of the dam to rest upon would have no application to take plaintiff's right of action for injuries caused by flooding out of the operation of the statute of limitations.

[Ed. Note.—For other cases, see Limitation of Actions, Cent. Dig. § 305.\* 9 Va.-W. Va. Enc. Dig. 412.]

**6. Waters and Water Courses (§ 179 (4)\*)—Dams—Injunction.—Evidence—Sufficiency.**—In an action to enjoin the maintenance of a dam which was flooding plaintiff's lands and for damages thereby caused to the alleged lands of plaintiff, evidence held not to show that the dam was constructed under the provisions of any of the Milling Acts of the state.

[Ed. Note.—For other cases, see Waters and Water Courses, Cent. Dig. §§ 250, 263.\* 7 Va.-W. Va. Enc. Dig. 534.]

Appeal from Circuit Court, Nottoway County,

Suit for injunction by M. M. Hayden and another against the Norfolk & Western Railway Company. Judgment for plaintiffs, and defendant appeals. Reversed.

*F. S. Kirkpatrick*, of Lynchburg, and *W. Moncure Gravatt*, of Blackstone, for appellant.

*H. H. Watson*, of Crewe, and *T. Freeman Epes*, of Blackstone, for appellees.

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VIRGINIA RY. & POWER CO. *v.* ARNOLD.

June 14, 1917.

[92 S. E. 925.]

**1. Carriers (§ 247 (1)\*)—Carriage of Passengers—Contract Relation.**—The relation of passenger and carrier is one of contract, but it differs from a contract in the ordinary sense in that it is a contract which a common carrier cannot decline to make where the would-be passenger has brought himself within the requirements entitling him to ask the service of carriage and he does in fact ask

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.